

**UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STEPHEN J. TUTTLE, et al,

Plaintiffs,

V.

AUDIOPHILE MUSIC DIRECT, INC., et al.,

Defendants.

Case No. 2:22-cv-01081-JLR

**DECLARATION OF
JEANNE C. FINEGAN, APR OF
KROLL SETTLEMENT
ADMINISTRATION, LLC IN
CONNECTION WITH
IMPLEMENTATION OF NOTICE
PLAN**

I, JEANNE C. FINEGAN, hereby declare:

1. I am the Managing Director and Head of Kroll Notice Media Solutions (“Kroll Media”),¹ a business unit of Kroll Settlement Administration, LLC (“Kroll”), the Settlement Administrator in the above-captioned case. This declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. Kroll was appointed as the Settlement Administrator to, among other tasks, develop and implement a notice plan (the “Notice Plan”) that is reasonably calculated to provide notice to Class Members in connection with the Settlement.

3. This declaration provides a report concerning the successful implementation of the Notice Plan, as previously detailed to the Court in the *Declaration of Jeanne C. Finegan, APR of Kroll Settlement Administration, LLC in Connection with Preliminary Approval*, filed on February 2, 2023. The Notice Plan commenced on June 30, 2023, and was substantially completed on July 30, 2023.

SUMMARY OF NOTICE PROGRAM

4. The Notice Plan employed best-in-class tools, technology and optimizations to ultimately reach potential Class Members and included the following components:

¹ Capitalized terms used but not defined herein have the meanings given to them in the Settlement Agreement (as defined below).

- 1 • Direct notice via both (i) Direct Mailed Full Notice via first-class mail, and (ii)
Emailed Summary Notice to all identified Class Members;
- 2 • CAFA Notice to appropriate state and federal government officials;
- 3 • Print publication of Summary Notice in industry niche magazines targeted to
reach Class Members;
- 4 • Online display banner advertising specifically targeted to reach Class Members;
- 5 • Social media advertising through Facebook, Instagram and YouTube specifically
targeted to reach Class Members;
- 6 • Settlement Website; and
- 7 • Toll-free telephone information line.

DIRECT NOTICE TO CLASS MEMBERS

10 5. On May 17, 2023, Kroll received two (2) data files from Defendants. One file
11 contained names, addresses, emails and phone numbers of 27,846 Class Members. The second file
12 contained names, addresses, emails and phone numbers for 317 retail merchants of Applicable
13 Records. Kroll undertook several steps to reconcile the two lists and compile the eventual “Class List”
14 for the email and mailing of Notice. Kroll first determined which records had missing owner names
15 or mailing addresses and removed these records. Kroll then removed any duplicate Class Members
16 or retail merchants. Additionally, in an effort to ensure that Notice would be deliverable to Class
17 Members and retail merchants, Kroll ran the Class List through the USPS’s National Change of
18 Address (“NCOA”) database and updated the Class List with address changes received from the
19 NCOA. These efforts produced a total of 27,434 records for the Direct Mailed Full Notice.

20 6. On May 18, 2023, Kroll established an email address,
21 info@audiophilesettlement.com, to receive and reply to email inquiries from Class Members
22 pertaining to the Settlement.

23 7. On June 23, 2023, Kroll caused 27,434 Direct Mailed Full Notices to be mailed via
24 first-class mail. The Direct Mailed Full Notice provided Class Members with a copy of the long-
25 form Notice and a Claim Form. A true and correct copy the Direct Mailed Full Notice and Claim
26 Form are attached hereto as **Exhibits A and B**, respectively. Of the 27,434 mailed Notices, 876 were
27 returned by USPS as undeliverable as addressed. Kroll ran 876 records through an advanced address
28

1 search. The advanced address search produced 661 updated addresses. Kroll has remailed Notices to
 2 the 661 updated addresses obtained from the advanced address search.

3 8. On June 23, 2023, Kroll caused the Emailed Summary Notice to be sent to the 27,143
 4 email addresses on file for Class Members and retail merchants, as noted above. A true and correct
 5 copy of a complete exemplar Emailed Summary Notice (including the subject line) is attached hereto
 6 as **Exhibit C**. Of the 27,143 emails attempted for delivery, 5,388 emails were rejected/bounced back
 7 as undeliverable.

CAFA NOTICE

9 9. At defense counsel's direction, on February 10, 2023, pursuant to the Class Action
 10 Fairness Act, 28 U.S.C. §1715(b) (the "CAFA Notice"), Kroll sent the CAFA Notice via first-class
 11 certified mail, to (a) the Attorney General of the United States and (b) fifty-six (56) state Attorneys
 12 General identified in the service list for the CAFA Notice, a true and correct copy of which is attached
 13 hereto as **Exhibit D**. The CAFA Notice directed the Attorneys General to the website
 14 www.CAFANotice.com, a site that contains all the documents relating to the Settlement referenced
 15 in the CAFA Notice.

PUBLICATION NOTICE PLAN

17 10. The Summary Notice was published once (1x) in the following niche magazines:

Publication	Circulation	On Sale Date of Publication
<i>Goldmine Magazine</i>	5,000	July 1, 2023
<i>Stereophile Magazine</i>	70,000	July 4, 2023
<i>The Absolute Sound Magazine</i>	32,000	July 27, 2023

22 11. Combined, these niche magazines have a total circulation of over 107,000. Attached
 23 hereto as **Exhibit E** are tear sheet proofs of publication.

ONLINE DISPLAY ADS

25 12. Online display ads were specifically targeted to publisher websites featuring
 26 audiophile and music collector related content. The websites included goldminemag.com,
 27 stereophile.com, and theabsolutesound.com. Attached hereto as **Exhibit F** are copies of the online
 28 display ads.

SOCIAL MEDIA

13. Social media ads on Facebook and Instagram appeared in specifically targeted users' Newsfeeds² and Stories.³ These ads employed multiple layers of targeting and focused on people who have *liked*, *followed*, or *interacted* with relevant pages, accounts, videos or posts and tags, including the following pages and accounts:

- Goldmine: The Music Collector's Marketplace
- Vinyl Goldmine
- Stereophile Magazine
- The Absolute Sound
- Absolute Sound & Music
- Analog Power
- Mobile Fidelity Sound Lab
- Music On Vinyl
- 50's and 60's Music History
- Vinyl Keeper- Vinyl Music Culture
- VINYL MOON
- Music Vinyl Clocks
- Recycle Music- Vinyl, CDs, Vintage Electronics, Music Memorabilia
- Vinyl Is Music
- Vinyl Collection & More
- Fat City Vinyl & Music Blog
- RockwellMusic
- Vinyl Collectors
- Biscuits and Vinyl
- Elvis Presley Collectible Vinyl and Bookstore
- Little Elephant Custom Vinyl
- Old Man Vinyl Records, LLC

² Newsfeeds are a primary means for users to consume information on Facebook.

³ “Facebook Stories” is a feature that lets users share content i.e., photos, videos, or animation. Stories are considered a second news feed.

1 14. Further, social ads targeted followers and fans of the following groups:

2	<u>Mobile Fidelity Sound Lab Fan Group</u>
3	<u>SOUND & VISUAL ENGINEERING EXPERTS</u>
4	<u>SOUND EQUIPMENT FOR SALE</u>
5	<u>Sound Engineer - Audio Technician</u>
6	Sound Systems, Speakers, Amplifier Market Place
7	<u>VINYL / RECORDS FOR SALE</u>
8	<u>Vinyl Addiction</u>
9	<u>Vinyl Record & Player Collectors Club</u>
10	<u>Vinyl Records For Sale In The US</u>
11	<u>The Vinyl Revolution</u>
12	<u>Vinyl Collectors & Trading Group</u>
13	<u>Now Spinning (Sponsored by NTX Vinyl)</u>
14	<u>The Vinyl Den</u>
15	<u>Vinyl Records Forever</u>
16	<u>Vinyl Record Stores And Sellers</u>
17	<u>New Vinyl Releases</u>
18	<u>VINYL ALERTS</u>
19	<u>Vinyl freaks & audiophile geeks</u>
20	<u>Rare Vinyl Records - trade / sell / auction / talk</u>
21	<u>Rare Holy Grail Vinyl Record Albums and 45s</u>
22	<u>Wholesome Vinyl Community (+ More)</u>

20 15. Social ads also targeted users that have interacted with or posted comments using
21 hashtags⁴ that include: #mofi, #mfsi, #audiophilevinyl, #vinylcommunity, #collectablevinylrecords,
22 #analogrecord, #mofivinyl, #ultradisc, and #originalmasterrecording.

23 16. On YouTube, display ads were placed on channels and/or content relevant to vinyl
24 record collectors, original master recordings, audiophiles, Stereophile and MoFi.

25 17. Attached hereto as **Exhibit G** are copies of the social media ads.

26 18. In aggregate more than 1,500,000 online and social media impressions were served.

27 4 Hashtags (i.e. "#") are used on social media sites and applications to identify digital content related
28 to specific topics that people are interested in.

PRESS RELEASE

19. On July 5, 2023, Kroll Media distributed a press release across PR Newswire's USA1 distribution network. A total of 391 news mentions occurred as a result. Attached hereto as **Exhibit H** is a copy of the press release and pick up report.

SETTLEMENT WEBSITE

20. In accordance with the terms of the Settlement Agreement, Kroll created a dedicated Settlement Website entitled www.audiophilesettlement.com. The Settlement Website “went live” on June 23, 2023. The Settlement Website contains a summary of the Settlement, allows for online claim filing, allows Class Members to contact the Settlement Administrator with any questions or changes of address, provides notice of important dates, such as the Fairness Hearing date and deadlines for submitting Claim Forms, objections or opt-outs, and provides Participating Claimants who file Claim Forms online the opportunity to select an electronic payment method, including Venmo, Zelle, PayPal, e-Mastercard, or ACH, as well as payment by check. The Settlement Website also contains copies of the Notice, the Settlement Agreement, the Claim Form, and a list of MSLRPs by date, available for download. As of October 4, 2023, over 17,246 users have visited the Settlement Website.

TOLL-FREE TELEPHONE NUMBER

21. On February 22, 2023, Kroll established and continues to maintain a 24-hour toll-free telephone line, 1-833-630-6697, where callers may obtain information about the Settlement through an Interactive Voice Response (“IVR”) system. The phone number is also configured to enable callers to leave a voicemail message, whereupon calls are returned by Kroll live operators the next business day. As of October 4, 2023, 588 individuals have called the IVR system.

CLAIM ACTIVITY

22. The deadline for submitting Claim Forms under the Settlement was September 21, 2023.

23. As of October 4, 2023, Kroll has received 772 Claim Forms through the mail and 714 Claim Forms filed electronically through the Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.

24. Kroll will continue to keep the parties apprised of the number of Claim Forms received. Following a thorough review of all claims, Kroll will provide the parties with a report as to the number of claims which are determined to be valid, as well as the number of claims of which are determined to be invalid or insufficient.

OBJECTIONS AND OPT OUTS

25. On February 22, 2023, Kroll designated a post office box with the mailing address *Tuttle v. Audiophile Music Direct*, c/o Kroll Settlement Administration, PO Box 5324, New York, NY 10150-5324 in order to receive correspondence from Class Members.

26. The Objection/Exclusion Deadline was August 22, 2023. Although Class Members were not instructed to submit objections or opt-out requests to the Settlement Administrator, as of September 26, 2023, Kroll has received four (4) timely requests for exclusion and seven (7) objections to the Settlement.

CONCLUSION

27. In my opinion, the Notice Program reflected a particularly appropriate, reasonably calculated, highly targeted, and contemporary way to reach as many Class Members as possible and inform them of their rights and options under the Settlement. Importantly, I believe that it satisfies the requirements of Federal Rule of Civil Procedure 23 and the guidance set forth by the Federal Judicial Center and the Manual for Complex Litigation, 4th Edition.

CERTIFICATION

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge.

Executed on October 5, 2023, in Tigard, Oregon.

Jeanne C Finegan
Jeanne C. Finegan